

21



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,795	12/28/2001	Brad R. Black	PAT 2222-2 US	3078
26123	7590	09/08/2005	EXAMINER	
BORDEN LADNER GERVAIS LLP WORLD EXCHANGE PLAZA 100 QUEEN STREET SUITE 1100 OTTAWA, ON K1P 1J9 CANADA			LIM, KRISNA	
			ART UNIT	PAPER NUMBER
			2153	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,795

Applicant(s)

BLACK ET AL.

Examiner

Krisna Lim

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 9-21 is/are allowed.
- 6) ☒ Claim(s) 6 and 22 is/are rejected.
- 7) ☒ Claim(s) 7-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claims 1-22 are still pending for examination.

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Claim 22 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter including an intangible media such as a data signal or a carrier signal which is incapable of being touched or perceived absent the tangible medium through which they are conveyed. It is true that an article of manufacture and a machine-readable storage medium is a statutory category of the invention (2107.01 of the MPEP), however if the specification defines this machine-readable storage medium as a data signal or a carrier wave, this machine-readable storage medium is also intangible media which is a non-statutory subject matter. Thus, the claimed invention is directed to the code which is not a statutory subject matter because this code has not clearly claimed that they are executable by the computer. See section 2106 of the MPEP.

3. Applicant's arguments, see the applicant's remark, filed 7/5/05, with respect to claims 1-5 and 9-21 have been fully considered and are persuasive. The rejection of these claims has been withdrawn.

4. Claims 6 and 22 are rejected under 35 U.S.C. § 102(e) as being anticipated by Chandra et al. [U.S. Patent No. 6,457,047]. This reference has been used in the previous office action.

5. Chandra et al. anticipated (e.g., see Figs. 1-10) the invention substantially as claimed. Taking claims 6 and 22 as exemplary claims, the reference anticipated a method including the steps of:

a) selecting a first data server (selecting one of application cache server) from the at least one additional data server based on specific predetermined criteria (e.g., see application cache servers and master application servers of Figs. 1-10);

b) sending specific data from the main server (cache directory server) to the first data server (e.g., see 44 of Fig. 2, col. 3 (line 54) to col. 5 (line) to col. 7 (line 60));

c) receiving at the main server a first request for the specific data, the first request being sent by an end user to the main server (e.g., col. 3 (line 54) to col. 5 (line) to col. 7 (line 60));

d) selecting the first data server (48 of Fig. 2) as being suitable for providing the specific data requested by the end user; and

e) sending instructions to the end user to request the specific data from the first data server (e.g. see 44 of Fig. 2, col. 3 (line 54) to col. 7 (line 60)).

6. Claims 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 1-5 and 9-21 are allowed.

A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisna Lim whose telephone number is 571-272-3956. The examiner can normally be reached on Monday to Wednesday and Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess, can be reached on 571-272-3949. The fax phone

Art Unit: 2153

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KI

September 2, 2005



KRISNA LIM
PRIMARY EXAMINER